

From De Novo to Clear Error: Don't Risk Your Standard of Review When Objecting to a Magistrate's Report

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Most attorneys know that failing to contemporaneously object to an adverse ruling can subject the issue to a more stringent standard of review on appeal. For example, failing to object below to a ruling of law means that, instead of applying *de novo* review, the appellate court will not reverse that ruling absent fundamental or clear error. Less well known, however, is that under certain circumstances, the standard of review can vary depending on the level of *specificity* of an objection. The district court in *Reynolds v. Saad*, No. 3:17-cv-67(GROH), 2018 WL 259386 (N.D. W.V. Jan. 2, 2018), explained one such circumstance. There, a federal district court considered the litigant's objections to the magistrate judge's report and recommendation. The district court explained that, although it is required under 28 U.S.C. §636(b)(1)(c) and Rule 72(b) to review *de novo* those portions of the magistrate judge's findings to which objection is made, that obligation is not triggered by "general" objections or those that "merely reiterate[] the same arguments made by the objecting party in its original papers submitted to the magistrate judge" Finding that the Petitioner's objections to various portions of the magistrate judge's findings were not specific and merely repeated the exact same arguments originally presented to the magistrate judge, the district court ruled it was not required to review the objections *de novo*, and instead reviewed the report and recommendation only for clear error.

Preservation Issue:

- Litigants objecting to a federal magistrate judge's report and recommendation risk losing entitlement to *de novo* review by the district court if the objections are generalized or merely reiterate the same arguments made to the magistrate.

When making objections to a magistrate judge's report and recommendation, make sure they are

specific — include as many grounds and as few conclusory statements as possible, and "connect the dots " for the court. Also, in advancing the arguments that were submitted to the magistrate judge, be sure to *add* a detailed explanation of *why* the magistrate judge's reasons for rejecting the arguments were wrong. In a close call, losing *de novo* review, thereby having to establish clear error instead, can make the difference between winning or losing. While the local rules of your jurisdiction will establish the proper procedure for your circumstances, remember this preservation pointer any time you must object to a preliminary report, because the *de novo* standard of review otherwise applicable to your objections may be in jeopardy. And, of course, it is just good advocacy to explain to the decision-maker why a recommendation against you should be rejected.

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